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of summary jurisdiction by a court of bankruptcy is that either it must take possession of the property through its officers, or the bankrupt himself must be in possession at or after adjudication, the capacity in which he holds being immaterial, or some third party claiming no adverse interest must be in possession. *In re Rathman*, 183 Fed. 913, 106 C. C. A. 253; *In re Smith*, 3 Am. B. R. 95, 110 Fed. 525.

CORPORATIONS—LEGALITY OF INCORPORATION—RIGHT TO ATTACK COLLATERALLY.—The defendants attempted to organize a corporation under a general law authorizing such corporations, but failed to file a copy of their articles of incorporation, with the clerk of the judicial district, as required by the statute. There had been an actual user of this corporate franchise for several years, when the plaintiff sought to hold them liable as partners. *Held*, a de facto corporation had been created and its legal existence cannot be questioned collaterally but only in a direct proceeding brought by the state for that purpose. *Swafford Bros. Dry Goods Co. v. Owen* (Okla.), 133 Pac. 193. See NOTES, p. 236.

EASEMENTS BY PRESCRIPTION—EXTENT OF RIGHT—OBSTRUCTION BY GATES.—Can the owner of a servient estate, now enclosed as agricultural lands, establish and maintain gates at the termini of an easement of way acquired by an adjoining owner of farm lands by prescription, the prescriptive period maturing while the lands were unenclosed woodland, during which no gates or bars were maintained? *Held*, Yes, since the nature of an easement determines its character and not the particular manner of the use that created the right. *Luster v. Garner* (Tenn.), 159 S. W. 604.

This is the view taken by many courts which hold that a gate may be constructed across the way if it is not an unreasonable obstruction to the purpose for which the way has been used. *Henson v. Young*, 4 Lans. (N. Y.) 63; *Hartman v. Fick*, 167 Pa. St. 18, 31 Atl. 342, 46 Am. St. Rep. 658; *Ames v. Shaw*, 82 Me. 379, 19 Atl. 856; *Dyer v. Walker*, 99 Wis. 404, 75 N. W. 79.

Other courts hold that a right of way acquired by prescription is commensurate with and measured by the use, and the owner of the land has no right to do anything which will hinder or obstruct such use. *Shivers v. Shivers*, 32 N. J. Eq. (5 Stew.) 578, affirmed in 35 N. J. Eq. (8 Stew.) 562; *Dudgeon v. Bronson*, 95 Am. St. Rep. 321 (note); *Fankboner v. Corder*, 127 Ind. 164, 26 N. E. 766; *Bolton v. Murphy* (Utah), 127 Pac. 335. The opinions in these cases are far from being strong and show a tendency to follow the courts cited first above.

Where the right of way has arisen by grant, the decisions are practically unanimously in favor of the right of the owner of the servient estate to erect gates across the way where they are reasonably necessary for his protection, since nothing passes as incident to the grant of a right of way over the land of another except what is necessary for its reasonable and proper enjoyment. *Lyman v. Arnold*, 5 Mason (U. S.) 195 Fed. Cas. No. 8,626; *Maxwell v. McAtee*, 9 B. Monroe (Ky.) 20; *McTarrish v. Carroll*, 7 Md. 352, 61 Am. Dec. 353; *Baker v. Frick*, 45 Md.

337, 24 Am. St. Rep. 506; *Berg v. Neal*, 40 Ind. App. 575, 82 N. E. 802; *Phillips v. Dressler*, 122 Ind. 414, 24 N. E. 226; *Newsom v. Newsom* (Tenn. Ch.), 56 S. W. 29; *Wille v. Bartz*, 88 Wis. 424, 60 N. W. 789.

The right of the servient owner to erect gates across an easement of way acquired by prescription where they are not an unreasonable obstruction to the purpose for which the way has been used, appears to be well established; and "The great preponderance of convenience to the landowner over the slight inconvenience to the way owner seems to make it 'reasonable' in the eye of the law that such should be the rule." *Berg v. Neal*, *supra*.

EMINENT DOMAIN—CONSEQUENTIAL INJURIES FROM PUBLIC USE.—In a state where the constitution provided that no private property shall be taken or damaged for public use without just compensation the plaintiff's property was diminished in value through the lawful grading of a street. *Held*, the plaintiffs are entitled to damages over and above the benefits occasioned by the public improvement. *Trust Co. v. City of Spokane* (Wash.), 134 Pac. 927.

The great majority of cases hold that the constitutional right to compensation when private property is taken for a public use does not extend to cases of consequential injury through the lawful grading of a street. *Callender v. Marsh*, 1 Pick. (Mass.) 418; *Smith v. City of Washington*, 20 How. (U. S.) 135; *Town of Harrisonburg v. Roller*, 97 Va. 582, 34 S. E. 573. It has further been held, but probably on less sound reasoning, that even actual or direct damage to private property does not constitute a "taking" under the meaning of that term. *Talcott Bros. v. City of Des Moines*, 134 Iowa 113, 109 N. W. 311.

The injustice of depreciating the value of private property for the public good without compensation has been recognized in the majority of the states. It has been remedied by incorporating into the constitutions the phrase "or damaged;" and this addition has by the overwhelming weight of authority been held to cover consequential injuries resulting from improvements to the streets and highways. *Swift & Co. v. City of Newport News*, 105 Va. 108, 52 S. E. 821; *Lumber Co. v. Porter*, 155 Ala. 426, 46 So. 773; *Brown v. City of Seattle*, 5 Wash. 35, 31 Pac. 313. But see *Lieper v. City of Denver*, 36 Colo. 110, 85 Pac. 849, 7 L. R. A. (N. S.) 108.

EMINENT DOMAIN—DAMAGES—VALUE FOR SPECIAL USE.—Where a railroad, in order to straighten a dangerous curve in its roadbed, took by eminent domain, a portion of appellee's property, it was *Held*, in estimating the damages, the adaptability of the land for railroad purposes because of its location can be considered, but not its value to the company because of its necessity. *Oregon R. & Nav. Co. v. Taffe* (Ore.), 134 Pac. 1024.

The great object of the courts in awarding damages for land taken under the power of eminent domain is to assess the damages at the "market value" of the property, with due regard for the effect of such taking upon the remaining property of the defendant where only part of